IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

Bail Appl..No. 6450 of 2007()

CRIME NO.219/2007 OF PANGODE POLICE STATION

: PETITIONER

MUHAMMED SALIM, S/O.ABDUL KHARIM,
AGED 19 YEARS, RESIDING AT SALIM MANZIL,
PUTHUSSERI, PANGODE, KILIMANOOR,
THIRUVANANTHAPURAM.

BY ADV. SRI.AYYAPPAN SANKAR
SRI.G.SURARSHAN
SRI.S.SUDHEER
SRI.M.M.RAJNEESH

RESPONDENTS: COUNTER PETITIONERS

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
PANGODE POLICE STATION,
THIRUVANANTHAPURAM.

3. CIRCLE INSPECTOR OF POLICE,
KILIMANOOR POLICE STATION,
THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6450 of 2007

Dated this the 6th day of November, 2007

ORDER

Application for anticipatory bail. The petitioner is now arrayed as the 14th accused in a crime registered, inter alia, under Section 307 I.P.C. The alleged incident took place on 09.10.07 in front of Mannaniya College at Pangode. It is alleged by the police that while students of the S.F.I were hoisting their flag in front of the college, a group of 25 persons came in a vehicle and unleashed an attack on such students. 12 persons suffered serious injuries. Crime has been registered, in which 7 accused persons are shown. It is alleged that altogether there are 25 accused persons. The petitioner is not named as an accused in the F.I.R. In the course of investigation, the petitioner has been identified as one of the miscreants and has been arrayed as the 14th accused. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has nothing to do with the activities of the N.D.F. The assailants are alleged to be members of the student wing of the N.D.F by name Campus Front. The petitioner has nothing to do with the N.D.F or the said campus front. All the students

of Muslim community are unnecessarily arrayed as accused. The petitioner is also brought on the array of accused only for that reason. It is submitted that the petitioner is well known to the informant. But the informant has not named the petitioner as one of the accused. In these circumstances, the petitioner may be granted anticipatory bail, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the brutal incident is well born out by records. The question is one of ascertaining the persons culpably responsible. Only 7 persons have been named. The petitioner has admittedly not been named. The fact that he is not named cannot justify the prayer for anticipatory bail. In an incident like this, it would be idle to expect the informant/injured to narrate names of all individual in one breath when the F.I statement is recorded. The available indications point to the complicity of the petitioner. At the moment, there is nothing at all to believe that the petitioner has been brought on the array only because of the fact that he belongs to the Muslim community. There are absolutely no features in this case which justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioner may be directed to resort to the ordinary and normal course of appearing before the

Investigating Officer. He may then be directed to seek regular bail in the usual course, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am unable to perceive any features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I agree with the learned Public Prosecutor that the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-